

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.10038 of 2020 and
W.M.P.No.12196 of 2020

M.Prabhu

...Petitioner

Vs.

1.The District Collector,
Dharmapuri.

2.The Tahsildar,
Karimangalam Taluk,
Dharmapuri District.

3.The President,
Thumbanahalli Panchayat,
Karimangalam Union,
Dharmapuri District.

...Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorari, to call for the records pertaining to the Order bearing No. Nil, dated 05.06.2020 on the file of the third respondent, quash the same and pass orders.

For Petitioner : Mr.R.Selvakumar

For Respondents : Mr.S.N.Parthasarathy,
Government Advocate

O R D E R

This writ petition has been filed challenging the impugned order passed by the third respondent dated 05.06.2020 wherein the petitioner has been asked to remove the portions of the property that encroaches upon the public path way.

2.The learned counsel for the petitioner submitted that the petitioner, his brother and his father are in possession and enjoyment of Survey Nos.318/30, 318/25 and 318/26 respectively. The learned counsel submitted that these survey numbers are classified as natham land and therefore, the petitioner and his family members being the first occupants, have become the owners of the property.

3.The learned counsel for the petitioner submitted that two other owners of the properties situated in Survey Nos.318/28 and 318/29 seem to have given a complaint on the ground that the petitioner has encroached upon the public pathway in Survey No.318/27. The third respondent without even giving a notice has passed the impugned order directing the petitioner to remove the encroached portion within a period of fifteen days. Aggrieved by the same, the present writ petition has been filed before this Court.

4.The learned counsel for the petitioner submitted that S.No.318/27 is a private pathway that is enjoyed by the petitioner, his father and brother and it has been enjoyed for a very long time. It was further submitted that no construction has been put up in the pathway. It was submitted that without taking exact measurements and without putting the petitioner on notice, urgent steps have been taken by the third respondent to interfere with the petitioner's right and possession of the property. Therefore, the impugned order passed by the third respondent requires interference.

5. Mr.S.N.Parthasarathy, learned Government Advocate appearing on behalf of the respondents, based on the written instruction, submitted that S.No.318/27 has been categorized as a public pathway in the Revenue Records. The learned Government Advocate submitted that the petitioner and his brother have put up construction by including this pathway also and thereby, they are preventing others from using the pathway. The learned Government Advocate further submitted that based on the complaint given by the adjacent land owners, a survey was made and it was found that there is an encroachment over the pathway. In view of the same, the third respondent has issued the impugned communication to the petitioner to remove the encroached portion failing which, the third respondent will remove the same.

6.In reply to the submission made by the learned Government Advocate, the learned counsel for the petitioner submitted that the impugned order/communication of the third respondent is completely silent with regard to the exact survey numbers in which the alleged construction has been put up. The learned counsel submitted that no part of the construction was laid on the pathway and if notice had been given to the petitioner, the petitioner would have established the same. Therefore, the learned counsel submitted that by way of instructions, some extra details are now being furnished by keeping the petitioner in dark.

7.This Court has carefully considered the submissions made

on either side and the materials available on record.

8.A reading of the affidavit filed in support of this writ petition and also on a careful consideration of the submissions made by the learned counsel for the petitioner, it is clear that the land in S.No.318/27 has been identified only as a passage. The only controversy is as to whether this is a public passage or a private passage as claimed by the petitioner. The nature of the passage is an issue which cannot be decided in this writ petition and the same has to be agitated only before the competent civil court by letting in evidence. Therefore, this Court does not want to go into that issue in the present writ petition.

9.The petitioner has come before this Court with a categorical statement that the petitioner, his brother and his father have put up construction only in their respective survey numbers and no construction has been put up in S.No.318/27. According to the third respondent, the petitioner has put up construction by encroaching upon S.No.318/27 also. It is again a factual dispute which cannot be gone into by this Court and it requires evidence.

10.The specific case of the petitioner is that he was not issued with any notice by the third respondent before passing the impugned order. According to the petitioner, he will be able to establish the fact that no construction has been put up in S.No.318/27. If the petitioner is very clear about his stand, a survey can be done by the third respondent with the help of the second respondent in the presence of the petitioner to find out if any encroachment has been made in S.No.318/27. If there is an encroachment, the same can be removed by the respondents. If there is no encroachment, then the stand taken by the petitioner will be vindicated.

11.In view of the above discussion, there shall be a direction to the second and third respondents to issue notice to the petitioner and fix a date for the survey of the property in the presence of the petitioner. If any encroachment is found in S.No.318/27, the respondents can proceed further to implement the order dated 05.06.2020. This process shall be completed within a period of two weeks from the date of receipt of a copy of this order. Till then, the impugned order passed by the third respondent shall be kept in abeyance.

12.Insofar as the issue regarding the nature of the passage as to whether it is a private passage or a public passage the

same cannot be gone into in this writ petition and it is for the petitioner to agitate the same before the appropriate Civil Forum, if so advised. This writ petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vkr

To

- 1.The District Collector,
Dharmapuri.
- 2.The Tahsildar,
Karimangalam Taluk,
Dharmapuri District.
- 3.The President,
Thumbanahalli Panchayat,
Karimangalam Union,
Dharmapuri District.
- 4.The Government Pleader,
High Court, Madras.

+1cc to Mr.R.Selvakumar, Advocate, S.R.No.26077
+1cc to the Government Pleader, S.R.No.26125

सत्यमेव जयते

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MP (CO)
KKV/13/08/2020

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